GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Establishment – Engineering – PH&ME Department – Appeal of Sri R.Subba Rao, Deputy Executive Engineer, Zone-II for restoration of his seniority in the cadre of Dy.EE w.e.f. 30.08.2003 i.e., original date of joining as Dy.EE under Zone-II, before arrival of repatriated persons - Appeal examined and allowed - Orders – Issued.

MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT (C) DEPARTMENT

G.O.Ms.No.159 Dated:25.06.2015
Read the following:-

1. Orders of Hon'ble APAT, Hyderabad in OA No.4423/2013, Dt.17.06.2013.
2. Representation of Sri R.Subba Rao, Deputy Executive Engineer, Zone-II, Dt.24.06.2013 and remainders thereon.
3. From the Engineer-in-Chief, Public Health, PH&ME Department, Lr.No.3339/CS1/2013, Dt.28.09.2013, 30.06.2014 and 13.03.2015.

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ORDER:

In the reference 1st read above, the Hon'ble APAT, Hyderabad has passed orders that, 'pending disposal of OA, the respondents are directed to consider the case of the applicant for promotion to the post of Executive Engineer basing on the length of service in the feeder category of Deputy Executive Engineer, on adhoc basis in the existing vacancy'.

2. In the reference 2nd read above, Sri R.Subba Rao, Deputy Executive Engineer, Zone-II has filed an appeal before the Government stating that, he was promoted as Dy. EE on 30.08.2003 and placed at Sl.No.2, next to Sri M. Swami Naidu in the Zonal Seniority of Dy.EE category. Further, for ensuring the strict implementation of provisions of the Presidential Orders, 1975, Government have decided to repatriate the non-local candidates appointed in deviation of the POs to their respective local cadres to which the candidates would otherwise belongs to and issued orders vide G.O.Ms.No.674, G.A. (MC.I) Department, Dt.07.09.2007 stating that "the transfers shall be ordered in public interest as provided under para-5(2) (c) of the P.Os. and they shall be eligible for protection of the seniority since the transfers are made in public interest". Accordingly, with regard to PH & ME Department, orders were issued repatriating the individuals belonging to Zone-II by virtue of local status and working in other zones, with a protection of seniority to them in Zone-II, reviewing the seniority restricted to protect the seniority in the transferred category duly pushing down the affected persons, since the transfers are made in public interest. Out of which, (6) individual are seniors to the applicant. While protecting the seniority of transferred persons in such category duly pushing down the affected persons, the Engineer-in-Chief (PH) has not followed the same and considered the other persons those who are already working in Zone-II and not transferred from other Zones in terms of Presidential Orders, 1975 and altered his date of actual promotion Dy. EE category as 27.09.2007 vide Memo No. 5499/CS1/2013-7 Dated: 06.06.2013. The review of such seniority was not restricted to the repatriated candidates only in the transferred category by pushing down the affected persons as per 5 (2) I. Causing which, another five (5) Dy. Executive Engineers those who are actually working in Zone-II and who are Juniors to the applicant in the Dy.EE category were assigned, which is unjust. If the review is done as per the Government Orders, considering protection of seniority limiting it to the repatriated Engineers only, he was supposed to be placed at Sl.No.8 in the revised seniority, but he was placed at Sl.No.13.

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As per Rule 24 of AP State and Subordinate Service Rules-1996, *Any order of revision likely to affect a person who has already been appointed from such panel shall be given an opportunity of making his representation against the proposed revision, before any order of revision is passed'*. 'But, he was not given any opportunity for making his representation against the proposed review / revision of date of his actual promotion before such order of revision was passed. On the contrary, the original seniority among the DEE category of Zone–II resting for more than 10 years is disturbed, which is against the rules and principles of natural justice as well as Supreme Court directions.

3. He has further stated that, subsequently, Government have considered adhoc promotions to the post of Executive Engineer vide G.O.Ms.No.395, MA&UD (C) Department, Dt.14.08.2013 keeping in view of the interim direction on 26.04.2013 of Hon'ble APAT in OA NO.3042/2013 "*to consider promotions basing on the length of service in feeder category on adhoc basis". In his case also, the* Hon'ble APAT has issued similar interim direction on 17.06.2013 in O.A. No.4423/2013, to consider him for promotion basing on the length of service in feeder category on an adhoc basis. However he was not considered for promotion as Executive Engineer in 8/2013 panel due to unjust "review of seniority proceedings Dt.06.06.2013". Therefore, he has requested the Government to resolve to restore his seniority in the cadre of Dy.EE in Zone-II as per the original date of his promotion i.e., 30.08.2003 and consider for adhoc promotion as Executive Engineer basing on length of service as Dy. EE.

4. In the reference 3rd read above, the Engineer-in-Chief(PH), Hyderabad has stated that, Sri R.Subba Rao was appointed to the post of Assistant Executive Engineer in the year 1995 under Zone-II. Further, he was promoted to the post of Deputy Executive Engineer on 26.08.2003 under Zone-II from the slot of Assistant Executive Engineer in the panel year 2002-03 and joined on 30.08.2003 and continuing as such. In the year 2008, Government have taken a policy decision to review all the recruitments made over a period of time whether those recruitments were made in accordance with the provisions of Six Point Formula or not. Accordingly, the Government have issued repatriation orders to the various individuals of the Department vide G.O.Ms.No.419 and 423, MA &UD Department, Dt.12.06.2008 repatriating the non locals to their respective local parent Zones as part of implementation of Six Point Formula. The said orders were issued in the public interest and with protection of seniority under para 5 (2) (c) of Presidential Order. Accordingly, certain Deputy Executive Engineers working in various Zones in violation of six point formula were repatriated to Zone-II as per their local status and joined under Zone-II as per the repatriation orders issued by the Government. After various individuals joining from other Zones to Zone-II under Six Point Formula, an adhoc review DPC was convened on 04.04.2013 to consider notional promotions to the post of Deputy Executive Engineer in the repatriated local parent Zone of Zone-II and issued necessary notional promotion orders to the individuals concerned with this effect ordering notional dates of seniority in the cadre of Deputy Executive Engineer under Zone-II. Accordingly, a provisional review seniority list of Dy.EEs was prepared and communicated to the individuals concerned with this effect and placed on the Departmental web-site. In this seniority list, the name of Sri R. Subba Rao was shown below the names of Sri M.Narayana Rao, Sri M.Brahmaji, Sri P.Kameswara Rao and Sri V.Somashekaram. All these persons were initially appointed as AEEs by the APPSC and allotted to different Zones in the year 1989 and 1992 respectively. Sri R.Subba Rao was appointed as Assistant Executive Engineer in the year 1995 from the post of Assistant Engineer under Zone-II and where as the above persons were appointed directly as Assistant Executive Engineers by the APPSC prior to Sri R.Subba Rao and promoted as Deputy Executive Engineers in the appointed Zones. Due to issuing of repatriation orders by the Government, all the above persons have joined under Zone-II and the Department has reviewed their promotions in the cadre of Deputy Executive

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Engineer in the Zone-II and assigned notional dates to the individuals in the cadre of Deputy Executive Engineer. They were placed above the name of Sri R.Subba Rao as he is junior in the cadre of Assistant Executive Engineer under Zone-II to the above persons. The contention of Sri R.Subba Rao is to fix his seniority in the cadre of Deputy Executive Engineer as 30-8-2003 i.e., original date of joining as Deputy Executive Engineer under Zone-II before arrival of repatriated persons. But, after joining of the repatriated persons in the respective local parent Zones, their seniority is to be reviewed in the local parent Zones. Accordingly, the notional dates of seniority in the cadre of Deputy Executive Engineer were assigned to the repatriated persons through the review DPC Dt.04.04.2013 and accordingly, the seniority of Sri R.Subba Rao was shown below the names of the repatriated persons. In view of the above, the seniority of Sri R.Subba Rao was correctly shown in the list of Deputy Executive Engineers communicated vide Proceedings No. 5499/CS1/2013, Dt.03.05.2013. Further, the seniority list of Deputy Executive Engineers Dt. 03.05.2013 is issued to the individuals concerned seeking objections if any after observing the repatriation orders issued by the Government under SPF and after approval of the review DPC Proceedings Dt. 04.04.2013. There were certain objections received on the above seniority list of Deputy Executive Engineers Dt.03.05.2013 including the objection of Sri R.Subba Rao, Dy.E.E. These objections were examined by the Department and disposed of on 06.06.2013 by issuing speaking orders to the concerned including Sri R.Subba Rao, Dy. Executive Engineer. Further, the final seniority lists of Deputy Executive Engineers (Zonal and integrated) were prepared and communicated to the individuals concerned on 06.06.2013 after disposing the objections and it was also placed on Departmental website. The actual promotion date of Sri R.Subba Rao i.e. 30.08.2003 cannot be assigned to Sri R.Subba Rao as his adhoc promotion of Deputy Executive Engineer was already reviewed by the review DPC on 04.04.2013. The provisional seniority list of Deputy Executive Engineers was issued on 03.05.2013 and it was subsequently finalized on 06.06.2013 after observation of the impact of SPF and objections. The objection of Sri R.Subba Rao was also examined and disposed duly issuing speaking orders to him vide Memo No. 5499/CS1/2013-7 Dt.06.06.2013.

5. The Engineer-in-Chief(PH), Hyderabad has further submitted that the Hon'ble APAT have issued interim directions on 26.04.2013 in OA No. 3042/2013 to the respondents to consider promotions to the post of Executive Engineer basing on the length of service in the feeder of Deputy Executive Engineer on adhoc basis in the existing vacancies. In these aspect, the Department has prepared and communicated a seniority list of Deputy Executive Engineers vide Proc. No. 5499/CS1/2013, Dt.03.05.2013 as per length of service and subsequently finalized the seniority list of Deputy Executive Engineers vide Proc. No. 5499/CS1/2013, Dt.06.06.2013 duly disposing the objections and placed final seniority list of Deputy Executive Engineers on departmental website for communication of the individuals concerned after observing the impact of SPF through review DPC proceedings Dt.04.04.2013. The Department and Government have taken action in the matter of consideration of promotions to the post of Executive Engineer keeping in view of the orders Dt.26.04.2013 of Hon'ble APAT in the OA No. 3042/2013. Accordingly, a DPC was convened on 06.07.2013 by the Government and considered promotions of the eligible persons and issued promotion orders to the concerned as Executive Engineers vide GO Rt. No. 1295 MA, Dt.19.08.2013. Sri R.Subba Rao, Deputy Executive Engineer could not be considered for promotion to the post of Executive Engineer in the above panels due to observing the impact of Six Point Formula under Zone-II along with other Zones. In view of the above, the contention of Sri R.Subba Rao, Deputy Executive Engineer is not worthy for consideration and there was no in-justice done to him in consideration of seniority in the cadre of Deputy Executive Engineer and promotion in the cadre of Executive Engineer as the promotions were considered by the Government to the post of Executive Engineers as per rules. He has finally submitted that, Sri R.Subba Rao, Dy.E.E.

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has filed OA No. 4423/2013 in Hon'ble APAT to consider his case for promotion to the post of Executive Engineer by taking the actual date of his promotion as Dy.E.E. i.e., 30.08.2003. Necessary detailed counter was filed in this OA and no further final orders are received in the matter from Hon'ble APAT. Hence, further examination may not be required on the request of Sri R.Subba Rao, Dy.E.E. as his appeal is presently pending before the Hon'ble APAT.

6. The issue has been examined at Government level and observed that,

i) For ensuring the strict implementation of provisions of the Presidential Order 1975, Government have decided that the non-local candidates appointed in deviation to the Presidential Orders, as identified by the respective Departments by reviewing the Direct Recruitment made from 1975 be repatriated to their respective local cadres to which the candidates would otherwise belong to and issued orders vide G.O.Ms.No.674, G.A. (MC.I) Department, Dt.07.09.2007 that, "after such specific identifications, non-locals who had been appointed in deviation shall be repatriated to their respective local cadres by transfer. The transfers shall be ordered in public interest as provided under para-5(2) (c) of the P.O. and they shall be eligible for protection of the seniority since the transfers are made in public interest".

ii) The entire review is only for identification of candidates recruited in a local cadres in each Zone under Direct Recruitment made from 1975, who belongs to other local cadres, in violation of Presidential Orders,1975 and to repatriate to their respective local cadres' duly protecting their seniority in the transferred category duly pushing down the affected persons.

iii) Certain instructions were also issued by the Government vide Circular Memo No.9543/MC/2007-13, dated 02.07.2007.

iv) According to the said instructions, certain employees in PH & ME Department have been identified and issued orders repatriating to their respective local cadres to which the candidates would otherwise belong to vide G.O.Ms.Nos.419 & 423, Dt.12.06.2008 and G.O.Rt.No.917, Dt.07.08.2010 of MA&UD Department. In such exercise, certain Deputy Executive Engineers have also been repatriated to Zone-II.

v) On taking into consideration of (3) Dy.EE viz., Sri M.Narayana Rao, Sri M.Brahmaji and Sri P.Kameswara Rao, repatriated to Zone-II under para-5(2) (c) of the P.O. 1975, the Zonal Seniority was communicated vide Memo No.5499/CS1/2012, Dt.12.09.2012 of the Engineer-in-Chief(PH), Hyderabad, wherein Sri R.Subba Rao, Dy.EE was shown at Sl.No.2 (after Sri MS Swami Naidu). Subsequently, another (3) Dy.EEs viz., Sri G.Krishna Rao, Sri V.Sudhakar and Sri V.Soma Sekharam were also joined in Zone-II as per their repatriation orders under para-5(2) (c) of the P.O. 1975.

vi) On repatriation of said Dy.EEs into Zone-II, the seniority of entire Dy. EEs have been reviewed through review DPC Dt.04.04.2013 and resettled the seniority in such category, even not issued such instructions by the Government, as the instructions are issued to that, 'the review of the seniority shall be restricted to protect the seniority in the transferred category duly pushing down the affected persons', not for entire category.

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vii) Whereas, due to review taken palace, considering other candidates also, who were recruited in the same Zone (i.e., II) and working at the time of transfers effected under para-5(2) (c) of the P.O. 1975, the five (5) Dy. Executive Engineers viz., Sri BSRK Prasad, Sri K.R.K.Satayanarayana, Sri P.Trinatha Rao, Sri T.Raghava Rao and Sri K.Koteswara Rao those shown next to Sri R.Subba Rao, Dy.EE in the seniority list communicated vide Memo No.5499/CS1/2012, Dt.12.09.2012, were assigned seniority above Sri R.Subba Rao communicated vide Memo Dt.03.05.2013, which is not in accordance with the rules in force.

viii) Moreover, the objections filed by Sri R.Subba Rao, Dy. EE on the revised seniority list communicated vide Memo Dt.03.05.2013 has to be disposed of in a proper way, quoting the rule position. But, the PH & ME Department has failed to do so.

ix) Government vide circular Memo. No. 57759/Ser-A/2004-1, Dt. 20.05.2004 quoting Hon'ble Supreme Court Judgment issued instructions not to reopen seniority related issue, which is 3 years old. The seniority of a person is defined in every category as per rule 33 (a) of APSS Rules, 1996 which reads the seniority unless he had been reduced to a lower rank as a punishment be determined by the date of his first appointment to such category. Hence, the seniority of persons repatriated by Zonal transfer as per rule 38 of APSS Rules, 1996 in the public interest may be protected / re-fixed by assigning them notional date if required in the category in which they were transferred accordingly to rule 33(b) of APSS rules 1996 which reads as "The order of merit or order of preference indicated in a list of selected candidates (previous Approved Panel) shall not be disturbed inter-se with reference to the candidate's position while determine the seniority. Notional date of commencement of Probation to the extent necessary shall be assigned to the repatriated) persons concerned". The position of repatriated person in the category of initial appointment in Parent zone is imaginary as no vacancy was left to locate them in initial category. Further the circular stated that APSS Rule 38, while empowering the Government to transfer a candidate in Public interest to different unit of appointment at any time have not defined to disturb or unsettle the seniority of remaining cadre in the unit every time.

x) The protection of seniority of repatriated persons under SPF will be maintainable if they were given either the date of their actual promotion to the category in which they were transferred in former zone as per rule 33 (a) or a notional date on par with their junior in the repatriated zone without disturbing the inter-se with reference to other candidates of previous approved panels as per rule 33(b) of APSS Rules 1996. Thus, APSS rule 33(b) defines method to be adopted for fixing seniority in the Six Point Formula (SPF) context which may not affect the remaining cadre within the zone and will not have any impact while arriving integrated seniority of different zones.

xi) The contention of Engineer-in-Chief(PH) / Review DPC, Dt. 04.04.2013 to review previous approved panels, so as to re-fix seniority of all settled members in the unit under DEE category citing that no two persons can be given one date does not sustain as per rule 33(b) as it allows notional date to the concerned persons repatriated in DEE category for determining/Protecting their seniority. The Zonal transfer made now in the DEE category is against existing vacancy. If the transfer would have been considered in the initial category (AEE) it would be against a non existing vacancy.

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xii) The General Administration (Ser.E) Department have stated that, as per orders issued in paras 6-8, of G.O.Ms.No. 674, GA (MC.I) Department, Dt. 7.9.2007 Government have decided that the non-local candidates appointed in deviation of the Presidential Orders, as identified by the respective Departments by reviewing the direct recruitments made from 1975 onwards be repatriated to their respective local cadres to which the candidates would otherwise belongs to. After such specific identification, non-local who had been appointed in deviation shall be repatriated to their respective local cadres by transfer. The transfers shall be ordered in public interest as provided under para-5(2) (c) of the P.O. and they shall be eligible for protection of the seniority since the transfer are made in public interest. Further, they have informed that the review of the seniority shall be restricted to protect the seniority in the transferred category duly pushing down the affected persons.

xiii) The Law Department have supported the G.A. (Ser.E) Department's stand.

xiv) The issue has been examined and directed the ENC (PH) vide Govt. Memo No.19977/C2/2013-2, Dt.13.05.2014, to consider the request of Sri R.Subba Rao, Dy. Executive Engineer of his seniority with effect from 30.08.2003 and include his name at the appropriate place in the panel 2012-13 based on the length of service i.e., 30.08.2003 and he may be promoted as Executive Engineer on adhoc basis in the above said panel. But the same was not implemented.

xv) The report of the ENC (PH) in the reference 3rd read above, is contradictory to the clarifications given by GAD/LAW Departments. Thus, the review is not in accordance with the rules.

7. Government after careful examination of the appeal, keeping in view the above observations, came to conclusion that the exercise made by the PH & ME Department, while protecting the seniority of repatriated candidates under para-5(2) (c) of the Presidential Orders, 1975 in the category of Dy. Executive Engineers into Zone-II has led to disturbances to the entire seniority in the said Zone, which is not in accordance with the rules in force. Thus, the place of Sri R.Subbara Rao, Deputy Executive Engineer in the revised seniority (Zone-II) communicated vide Memo Dt.06.06.2013 of Engineer-in-Chief (PH), Hyderabad has to be shown at Sl.No.8 instead of Sl. No.13.

8. Accordingly, Government hereby allow the appeal and order the Engineer-in-Chief (PH), Hyderabad to restore the seniority of Sri R.Subba Rao in Dy. Executive Engineer category in Zone-II with effect from 30.08.2003 and include his name at the appropriate place in the seniority list based on the length of service i.e., 30.08.2003 and submit proposals to consider him as Executive Engineer on an adhoc basis in the panel 2012-13.

9. The Engineer –in-Chief (PH), PH&ME Department, GoAP, Hyderabad shall take necessary action accordingly.

[BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH]

GIRIDHAR ARAMANE
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Engineer–in-Chief (PH), PH&ME Department, GoAP, Hyderabad.
The individual through the Engineer–in-Chief (PH), Hyderabad.
SF/SC

//Forwarded :: By Order//

SECTION OFFICER